IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTTS VALLEY BAND OF POMO INDIANS, *Plaintiff*, v. DOUGLAS BURGUM, in his official capacity as Secretary of the Interior, *et al.*, *Defendants.*	)	Civil Action No.: 1:25-cv-00958-TNM Judge Trevor N. McFadden

GTL PROPERTIES, LLLP'S REPLY IN SUPPORT OF ITS MOTION TO INTERVENE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Proposed Plaintiff-Intervenor GTL Properties, LLLP ("GTL"), by counsel, hereby submits its Reply in Support of its Motion to Intervene (ECF 20) in support of Plaintiff Scotts Valley Band of Pomo Indians ("Plaintiff" or "Scotts Valley").

INTRODUCTION

Plaintiff challenges a final decision issued by the U.S. Department of the Interior ("Department") in a March 27, 2025 letter ("March 27 Letter"). The March 27 Letter attempts to rescind the Department's January 10, 2025 final determination ("January 10 Decision") that an approximate 160-acre parcel of land in Vallejo, California ("Vallejo Parcel") is eligible for gaming conducted by Plaintiff ("Gaming Determination"). *See* ECF 20-1, at 5–6.[1] Notably, however, the Department's March 27 Letter did not rescind the second aspect of the January 10 Decision: the Department's decision to take the Vallejo Parcel into trust for Plaintiff. *Id.* at 5–7.

The combination of the March 27 Letter's two decisions—(1) to rescind the Gaming Determination while (2) leaving the Vallejo Parcel in trust—significantly harms GTL. In reliance on the January 10 Decision, GTL transferred a 32-acre portion of the Vallejo Parcel to the Department to hold in trust for Plaintiff. GTL also loaned Plaintiff funds to be able to purchase the remaining land that comprises the Vallejo Parcel.

The Department was well aware that its January 10 Decision would impact GTL, as the United States (through the Department) took title to GTL's previously owned property on January 30, 2025. *See* Notice, 90 Fed. Reg. 3,906 (Jan. 15, 2025) (noting parcels taken into trust); ECF 20-4, **Exhibit A** (Declaration of Gregory T.H. Lee, and copy of deed) ¶¶ 3–5 (discussing same). And under the terms agreed to with Plaintiff, GTL's repayment for both the land sale and the loan is

[1] All page number citations herein are to the ECF pagination.

contingent on gaming occurring. Thus, the March 27 Letter reverses the basis for GTL to be repaid but at the same time does not reverse the deed transfer for the 32-acre parcel to the United States. The March 27 Letter therefore causes dual damage to GTL by holding GTL's former property in trust while eliminating GTL's basis for repayment. No other party to this litigation, or otherwise, can stand in GTL's shoes to claim these same direct and concrete harms.

Accordingly, on April 11, 2025, GTL moved to intervene in this case pursuant to Federal Rule 24(a) or, in the alternative, Federal Rule 24(b). *See* ECF 20. On April 17, 2025, Defendants filed their opposition to GTL's intervention. *See* ECF 30 ("Opp.").

ARGUMENT

As discussed herein, GTL satisfies the criteria for intervention as of right under Rule 24(a)(2). Defendants' argument otherwise takes an overly narrow view of the intervention criteria and relies on cases that *permitted* intervention as of right.

Even if this Court determines that the criteria for intervention as of right are not satisfied, permissive intervention is appropriate.

In addressing both intervention as of right and permissive intervention, GTL only replies to the issues raised by Defendants in their opposition because this Court treats "arguments as conceded" when not raised in a response. *Kayode v. Garland*, No. 1:22-CV-03802 (TNM), 2023 WL 8083638, at *5 n.1 (D.D.C. Nov. 21, 2023) (McFadden, J.) (citing *Day v. D.C. Dep't of Consumer & Regul. Affs.*, 191 F. Supp. 2d 154, 159 (D.D.C. 2002)).

I. GTL Is Entitled To Intervene As A Matter Of Right.

GTL satisfies all criteria for both Article III standing and intervention as of right. Defendants' arguments in opposition are based on a cramped reading of standing and intervention caselaw and do not consider the direct and concrete harm to GTL resulting from the Department's actions.

A. GTL Has Article III Standing.

The "fundamentals of standing are well-known," requiring the plaintiff to demonstrate injury, causation, and redressability. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024).

Barring one footnote, Defendants challenge only the second and third standing elements of causation and redressability, which are "often 'flip sides of the same coin'" *Id.* at 380–81 (quoting *Sprint Commc'ns v. APCC Servs., Inc.*, 554 U.S. 269, 288 (2008)).[2] Because these two elements are so closely related, GTL addresses them together.

GTL first addresses Defendants' fleeting reference to injury in one passing footnote. *See* Opp. at 9 n.4. This Court should consider such an undeveloped argument in a mere footnote waived. *See Iowaska Church of Healing v. Werfel*, 105 F.4th 402, 414 (D.C. Cir. 2024) (declining to consider argument made in footnote). In any event, GTL's injury is assuredly not speculative. In reliance on the January 10 Decision, GTL transferred, and the United States accepted, the deed to property formerly owned by GTL. Loss of the real property (in the San Francisco Bay area), let alone not being paid for the sale of land and for the associated loan, are all concrete injuries. Defendants muddle causation with whether the asserted injury itself is concrete. *See* Opp. at 9 & n.4 ("For the same [causation] reasons, GTL's injuries are, at best, speculative.").

Turning to causation and redressability, Defendants erroneously argue that GTL has failed to establish causation because several interim steps must occur before gaming is ultimately allowed. *Id.* at 7–8. But this argument "wrongly equates injury 'fairly traceable' to the defendant with injury as to which the defendant's actions are the very last step in the chain of causation."

[2] Defendants also claim that GTL "does not even attempt to establish standing in its motion to intervene," Opp. 6, but that is wrong. Section I.B of the GTL's Memorandum expressly addressed Article III standing, where GTL set forth its injury, how the March 27 Letter caused that injury, and how that injury could be redressed by reversing the March 27 Letter.

Bennet v. Spear, 520 U.S. 154, 168–69 (1997). The causation requirement of Article III categorically does not require that the Defendants' actions be "the very last step in the chain of causation" leading to the injury in question. *Id.* at 169. Rather, it is firmly established that causation requires only that the injury be "'fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976)) (alterations omitted).

Here, GTL's injury is directly traceable to the Department's March 27 Letter. Before that letter, a necessary predicate for GTL to be paid (i.e., an eligibility determination allowing gaming) was in place. After the March 27 Letter's partial reversal, gaming cannot be allowed, yet the Department still holds the deed to the 32-acre parcel formerly owned by GTL and transferred to the Department only after the January 10 Decision, and in reliance on the Gaming Determination. Thus, while the Department's purported rescission of the Gaming Determination may not be "the very last step," *Bennet*, 520 U.S. at 169, in causing GTL's injury, it is certainly an indispensable and decisive link in the causal chain.

Fund for Animals, Inc. v. Norton, 322 F.3d 728 (D.C. Cir. 2003) is instructive in this matter. There, a wildlife conservation organization challenged the U.S. Fish and Wildlife Service's ("Service") failure to characterize a Mongolian species of sheep as endangered and for issuing permits allowing hunters to import the killed sheep to the United States. *Id.* at 730. Mongolia's Ministry of Nature and Environment sought to intervene on the side of the Service. *Id.* The Ministry argued that it had standing because a reversal would reduce revenues from fees paid by hunters. *Id.* at 733. The D.C. Circuit agreed, reasoning that "[t]he threatened loss of tourist dollars, and the consequent reduction in funding for Mongolia's conservation program, constitute a

concrete and imminent injury [that] is fairly traceable to the regulatory action." *Id.* Thus, even though the financial injury depended on the actions of third parties (in *Funds for Animals*, the hunters), the potential financial injury was fairly traceable to the Service's decision.

Fund for Animals applies in the same way here. The agency action directly impacts whether certain activities may be permissible. Here, it is gaming. In *Fund for Animals*, it was importation of hunting trophies. Although whether the eventual activity occurs (hunting or gaming) depends on non-agency actions, the beneficiary of the permissible activity is immediately harmed if the activity is made impermissible.

Stepping back for a moment, it is also important to observe that the logical conclusion of the Defendants' argument, if accepted, would be that Scotts Valley itself does not even have standing because interim steps are required before gaming may occur. But, tellingly, the Department appears not to have raised standing as a defense in Scotts Valley's recent trip to this Court, and this Court took standing as a given. *See generally Scotts Valley Band of Pomo Indians v. DOI*, 633 F. Supp. 3d 132 (D.D.C. 2022) (not addressing standing). The Department's constricted interpretation of causation would also never allow plaintiffs to challenge agency approvals that are not the last step in a causal chain but are still a necessary step. That is simply not the law. *See, e.g.*, *Bennet*, 520 U.S. at 168–69.

Not surprisingly, then, the Department's cited cases on causation are unpersuasive. First, *Center for Biological Diversity v. DOI*, 563 F.3d 466 (D.C. Cir. 2009), presents a readily distinguishable case with a remarkably attenuated causal chain. *See id.* at 478–79 (tracing chain from oil and gas leasing all the way to adverse effects on animals that petitioners enjoy). There the Court noted that petitioners "fail[ed] to take into account that, at each successive stage of [agency action], the law requires that [the agency] conduct additional and more detailed assessments . . . ."

Id. The Defendants, by contrast, only cite (1) likely litigation, (2) compact negotiation with California, and (3) operational steps (including financing and facilities construction), as the remaining steps to gaming. *See* Opp. at 7–9. None of these are within the Department's control. And, indeed, as a business partner with Scotts Valley, GTL would be at least tangentially involved in the success of the third step.

Second, the Department relies on *Yocha Dehe v. DOI*, 3 F.4th 427, 429 (D.C. Cir. 2021) for the proposition that there is an insufficient causal link between the March 27 Letter and GTL's injury. This case is also distinguishable. The D.C. Circuit stated that "neither Yocha Dehe *nor its property is the direct subject*" of the decision. *Id.* at 431 (emphasis added). Here, by contrast, the property the Department took the deed to is the "direct subject" of the March 27 Letter, in that it both took that property into trust *and* made a gaming eligibility determination for the same land. *See* ECF 20-1, at 10 ("[The March 27 Letter] leaves GTL in the untenable position where it no longer owns its portion of the Vallejo Parcel . . . but now faces the prospect of never being paid for that land . . . .").

Turning to the redressability side of the coin, the Department rinses and repeats its arguments on the interim steps needed before gaming may occur. *See* Opp. at 9–10. This case is not one where the redressability prong "can still pose an independent bar [in addition to causation] . . . because the case may not be the kind 'traditionally redressable in federal court.'" *FDA*, 602 U.S. at 381 n.1 (quoting *United States v. Texas*, 599 U.S. 670, 676 (2023)). Here, GTL's harms can be readily redressed by "set[ting] aside" the March 27 Letter under 5 U.S.C. § 706(2).

In the current circumstances caused by the March 27 Letter, gaming would not be permitted on the Vallejo Parcel, and GTL would therefore not receive payment for its property and loan. Reversing or holding unlawful the March 27 Letter would immediately remove that impediment

in the same way that removing the hunting trophies importation restriction would redress the proposed intervenor's injury in *Fund for Animals*. *See* 322 F.3d at 733. In other words, because this Court's reversal of the March 27 Letter is "a necessary first step on a path that could ultimately lead to relief fully redressing the injury," *Hazardous Waste Treatment Council v. EPA*, 861 F.2d 270, 273 (D.C. Cir. 1988), GTL has demonstrated its injury is redressable for Article III standing purposes.

Last, an intervenor of right only needs to "independently demonstrate Article III standing if it pursues relief that is broader than or different from the party invoking a court's jurisdiction." *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. 657, 674 n.6 (2020) (citing *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 440 (2017)). To the extent that this Court concludes that GTL does not have standing, GTL may still intervene, with its claims for relief limited to only those advanced by Scotts Valley.

B. GTL Has Established A Legally Protectable Interest.

Defendants erroneously contend that GTL has not demonstrated a legally protected interest. *See* Opp at 10–11. The single case Defendants cite in support of its argument provides that the interest at stake must be one where "the intervenor will either gain or lose by the direct legal operation and effect of the judgment." *United States v. Am. Tel. and Tel. Co.*, 642 F.2d 1285, 1292 (D.C. Cir. 1980). GTL meets that standard. Here, if the March 27 Letter is affirmed, then Scotts Valley would be precluded from conducting gaming on the Vallejo Parcel. In turn, GTL would therefore "lose by the direct legal operation" of such an affirmance.

It is as simple as that.

C. Plaintiff Does Not Adequately Represent GTL's Interests.[3]

Defendants argue that "Scotts Valley and GTL have nearly identical interests and objectives in this case." Opp. at 11. Not only is the statement inaccurate, but more importantly, that is not the legal test for representation of interest.

Rather, the test is whether "the applicant shows that representation of [its] interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Fund for Animals*, 322 F.3d at 735 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Defendants also sidestep the fact that the test for different interests is "'not onerous.'" *Id.* (quoting *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986)).

Here, and as noted in GTL's Motion to Intervene, the *combination* of the March 27 Letter's action on the Gaming Determination while not taking any action regarding the lands taken into trust uniquely injures GTL. *See* ECF 20-1, at 12. That difference is sufficient for the purposes of intervention. *See NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977) ("Even when the interests of [the defendant] and [proposed intervenors] can be expected to coincide . . . that does not necessarily mean that adequacy of representation is ensured for purposes of Rule 24(a)(2)."). And, the Indian Reorganization Act was intended for one primary purpose: to reverse effects of the allotment era, when the federal government took lands held for tribes *out* of trust. Maintaining lands *in* trust remains a core purpose of the Indian Reorganization Act.

Without citing any authority, Defendants also claim that GTL's belief that it "may" express different views on the law is insufficient under the adequately-represented criterion. Opp at 12. However, proposed intervenors only need to show that existing party representation "*may* be"

[3] Defendants do not address in their Opposition whether GTL's interest would be impaired, and therefore has conceded this point. *See Kayode*, 2023 WL 8083638, at *5 n.1.

inadequate. *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972) (emphasis in original).

GTL more than meets the minimal requirement for showing that its interests are not adequately represented.

II. In The Alternative, This Court Should Grant GTL Permissive Intervention.

Federal Defendants do not dispute, and therefore concede, that GTL has satisfied the jurisdictional, timeliness, and commonality elements of permissive intervention pursuant to Federal Rule of Civil Procedure 24(b). *See Kayode*, 2023 WL 8083638, at *5.

Federal Defendants' only argument against permissive intervention is that GTL's involvement will complicate and lengthen these proceedings. *See* Opp. at 12-14. To the contrary, allowing GTL to participate as a permissive intervenor will ultimately increase judicial efficiency by allowing this Court to resolve this dispute with all necessary parties and arguments in a single case at the same time, and GTL's prompt request for intervention demonstrates that it is unlikely to cause undue delay. *See, e.g.*, *100Reporters LLC v. DOJ*, 307 F.R.D. 269, 275, 286 (D.D.C. 2014) (noting "no basis" for delay or complication under permissive intervention analysis where intervention motions were filed soon after responsive pleadings and the case was "progressing in orderly fashion" (citing *Agee v. CIA*, 87 F.R.D. 350, 352 (D.D.C. 1980)).

Defendants' argument on this score also fails to engage with the actual text of Rule 24(b), which only directs courts to consider whether intervention would "*unduly* delay or prejudice the adjudication of the original parties' rights." *Id.* (emphasis added). Defendants have not identified any prejudice—much less "undue" prejudice—other than a potential "increase [in] the volume of pleadings and [potential] extraneous motions practice." Opp. at 12–13. That speculative concern does not prevent any party from fulling vindicating or protecting its position in this case.

Defendants' argument is also particularly unpersuasive in this case. This case challenges agency action under the Administrative Procedure Act. In such cases, the Court's review is generally limited to the administrative record. *See Chiayu Chang v. U.S. Citizenship & Immigration Servs.*, 254 F. Supp. 3d 160, 161 (D.D.C. 2017). *But see NRDC v. Train*, 519 F.2d 287, 292 (D.C. Cir. 1975) (permitting "limited discovery" in certain circumstances to ensure that "[no] documents which are properly part of the administrative record have been withheld"). Accordingly, admitting GTL as an intervenor likely would not complicate the case by subjecting Defendants to additional discovery.[4]

Finally, as discussed below, this Court has the authority and competency to manage its docket in the manner it determines, and GTL will participate accordingly. *See Liu v. Mayorkas*, No. 1:21-CV-1725 (TNM), 2022 WL 203432, at *2 (D.D.C. Jan. 24, 2022) (McFadden, J.) (finding intervenors' participation will not delay the case where the Court ordered intervenors to abide by a preestablished briefing schedule).

III. GTL Does Not Oppose Reasonable Conditions On Intervention.

GTL agrees to coordinate its filings with Plaintiff to the extent practicable to prevent the needless presentation of duplicative arguments and to "ensure the fair, efficacious, and prompt resolution of the litigation." *Forest Cty. Potawatomi Cmty. v. United States*, 317 F.R.D. 6, 15 (D.D.C. 2016) (citations omitted).

However, GTL does not agree that it "should be restricted from pursuing claims against Federal Defendants not raised by Scotts Valley," Opp. at 14, as this constitutes an undue limitation

[4] It is also a bit rich that the Department claims GTL's intervention would complicate the proceedings, but the Department does not take the same position for the movant defendant-intervenors. *See* ECF 29, at 8.

on its participation in this litigation. Allowing GTL to be heard on its positions regarding the legality of the Department's decisions would provide needed perspective, contribute to the development of the issues, and promote the orderly administration of justice. *See The Wilderness Soc'y v. Babbitt*, 104 F. Supp. 2d 10, 18 (D.D.C. 2000) ("[T]he purposes of Rule 24 are best served by permitting the prospective intervenors to engage in all aspects of this litigation . . .").

CONCLUSION

For the foregoing reasons, GTL respectfully requests that the Court grant its Motion to Intervene in this action and grant such other and further relief in its favor as the Court deems just and proper.

Dated: April 21, 2025

Respectfully submitted,

/s/ Jasmine G. Chalashtori
Jasmine G. Chalashtori (D.C. Bar No. 1016225)
WOMBLE BOND DICKINSON (US) LLP
2001 K Street, NW, Suite 400 South
Washington DC, 20006
Telephone: (202) 857-4410
Email: jasmine.chalashtori@wbd-us.com

Ana Maria Gutiérrez (admitted *pro hac vice*)
Michael Dean Miller (*pro hac vice* pending)
WOMBLE BOND DICKINSON (US) LLP
1601 19th Street, Suite 10000
Denver, CO 80202
Telephone: (720) 983-1350
Email: ana.gutierrez@wbd-us.com
Email: michael.miller@wbd-us.com

Counsel for Proposed Plaintiff-Intervenor GTL Properties, LLLP

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2025, I electronically filed the foregoing using the Court's CM/ECF system, which will send notification of such filing to the parties.

/s/ Jasmine G. Chalashtori